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J.S., Appellant	)	
	)	
and	)	Docket No. 09-2253
	)	Issued: August 12, 2010
DEPARTMENT OF VETERANS AFFAIRS,	)	
VETERANS ADMINISTRATION MEDICAL	)	
CENTER, Alexandria, LA, Employer	)	
	)	

Case Submitted on the Record

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

¹ The timeliness of the appeal was determined by the postmark on the envelope in which the appeal was mailed to the Board. See 20 C.F.R. § 501.3(f)(1).

FACTUAL HISTORY

On September 4, 2006 appellant, then a 43-year-old nursing assistant, filed a traumatic injury claim alleging that on that date she injured her mid to upper back while repositioning a patient. The Office accepted the claim for thoracic and lumbar back sprains.

On March 15, 2007 the employing establishment offered and appellant accepted the light-duty position of program support clerk based on the restrictions noted in a February 16, 2007 functional capacity evaluation.²

On September 8, 2008 appellant filed a claim for wage-loss compensation (Form CA-7) beginning September 2, 2008. She submitted a September 8, 2008 disability note from Dr. Robert K. Rush, a treating physician Board-certified in family and occupational medicine, in support of her wage-loss compensation claim. Dr. Rush requested that appellant be excused from work beginning September 2, 2008 in support of her wage-loss compensation claim.

By letter dated September 15, 2008, the Office noted receipt of appellant's claim for wage-loss compensation, which it determined was a claim for a recurrence of total disability. It requested additional information from appellant in support of her recurrence claim. The Office requested a statement from appellant explaining if her light-duty assignment had changed such that she could no longer perform the duties because it no longer met the restrictions set by her physician. It also requested a medical opinion from appellant's treating physician supporting her claim that a worsening in the work-related condition had occurred.

Subsequent to the September 15, 2008 Office letter, appellant submitted additional claims for wage-loss compensation beginning August 20, 2008.

On September 22, 2008 Dr. Rush diagnosed myofascial pain syndrome, chronic pain syndrome with depression and C6-7 cervical disc disease. He attributed appellant's chronic pain syndrome to work aggravation and requested she be excused from work. Dr. Rush noted that the diagnoses myofascial pain, chronic pain with depression and C6-7 cervical disc disease were complications from her September 4, 2006 employment injury that needed to be addressed.

In an October 8, 2008 progress note, Dr. Bradley J. Bartholomew, a treating Board-certified neurological surgeon, diagnosed C3-4 disc bulge with impingement, C4-5 disc bulge, C6-7 disc herniation with stenosis and multilevel degenerative change and left paracentral bulge at C5-6 and C6-7. A physical examination revealed normal lower and upper extremity strength, decreased left arm and leg sensory, tenderness on neck examination and almost no range of motion on back examination with bilateral paravertebral tenderness.

On an October 31, 2008 duty status report, Dr. Bartholomew indicated that appellant was totally disabled. He noted the injury date of September 4, 2006 and diagnoses of lumbar, cervical and thoracic sprains.

² The work restrictions included no bending/stooping, reaching above the shoulder and pushing and pulling and no lifting more than 10 pounds.

In an October 31, 2008 disability note, Dr. Rajinder Verma, a treating Board-certified family practitioner, requested that appellant be excused from work for the period October 31 to December 1, 2008.

On November 5, 2008 the Office received an August 26, 2008 disability note from Dr. Rush requesting that appellant be excused from work for the period August 25 to September 2, 2008.

In a December 1, 2008 attending physician's form, Dr. Bartholomew diagnosed chronic cervical and lumbar pain and checked "yes" to the question of whether it was employment related. He noted August 20, 2008 as the date appellant's total disability began.

In a December 1, 2008 disability note, Dr. Verma stated that appellant was disabled from working for the period December 1, 2008 to January 5, 2009.

By decision dated December 9, 2008, the Office denied her recurrence claim.

On December 15, 2008 appellant requested reconsideration and submitted a September 4, 2008 report by Dr. Rush who diagnosed chronic pain syndrome, myofascial pain syndrome, depression and C6-7 cervical disc disease which he checked "yes" to being employment related. Dr. Rush noted August 26 to October 20, 2008 as the period of total disability.

In a December 30, 2008 progress note, Dr. Bartholomew reported appellant's status following bilateral facet blocks given on December 17, 2008. He noted that appellant continued to have low back pain complaints going into her left lower extremity to her toes. Appellant also presented neck complaints and related having more cervical posterior headaches. A physical examination revealed normal upper and lower extremities strength, decreased arm and leg sensation and negative straight leg testing.

By decision dated March 5, 2009, the Office denied modification of the December 9, 2008 decision.³

LEGAL PRECEDENT

A person seeking benefits under the Federal Employee's Compensation Act⁴ has the burden of establishing the essential elements of her claim. A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁵ A person who claims a

³ The Board notes that, following the March 5, 2009 decision, the Office received additional evidence. However, the Board may not consider new evidence on appeal. See 20 C.F.R. § 501.2(c); *M.B.*, 60 ECAB ____ (Docket No. 09-176, issued September 23, 2009); *J.T.*, 59 ECAB ____ (Docket No. 07-1898, issued January 7, 2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *R.S.*, 58 ECAB 362 (2007); 20 C.F.R. § 10.5(x).

recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁶ Where no such rationale is present, medical evidence is of diminished probative value.⁷

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty.⁸ As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.⁹ To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a medical opinion, based on a complete and accurate factual and medical history and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.¹⁰

ANALYSIS

The Office accepted appellant's claim for thoracic and lumbar back sprains sustained on September 4, 2006. The issue is whether appellant established that she sustained a recurrence of disability on August 20, 2008 causally related to her September 4, 2006 employment injury.

On appeal appellant does not contend that there was a change in the nature and extent of her light-duty requirements. Instead she contends that the reports by her physicians along with the objective tests and clinical findings support her contention that she is totally disabled and, thus, entitled to wage-loss compensation. As appellant is not alleging a change in the nature and

⁶ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

⁷ See *Cecelia M. Corley*, 56 ECAB 662 (2005); *Ronald C. Hand*, 49 ECAB 113 (1957).

⁸ *C.S.*, 60 ECAB ____ (Docket No. 08-2218, issued August 7, 2009); *Richard A. Neidert*, 57 ECAB 474 (2006).

⁹ *K.C.*, 60 ECAB ____ (Docket No. 08-2222, issued July 23, 2009); *Albert C. Brown*, 52 ECAB 152, 154-55 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986); 20 C.F.R. § 10.5(x) provides, "Recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness." This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.

¹⁰ *Mary A. Ceglia*, 55 ECAB 626 (2004); *Maurissa Mack*, 50 ECAB 498 (1999).

extent of her light-duty job requirements, she must establish that she experienced a change in the nature and extent of her injury-related condition which disabled her from performing her light-duty job.¹¹ The Board finds that she has not met her burden of proof.

In support of her claim, appellant submitted medical evidence from her treating physicians, Drs. Bartholomew, Rush and Verma. In disability notes dated August 26 and September 8, 2008 Dr. Rush placed appellant off work beginning August 26, 2008. In his September 22, 2008 report, he provided diagnoses of myofascial pain syndrome, chronic pain syndrome with depression and C6-7 cervical disc disease. Dr. Rush indicated that appellant was totally disabled as a result of her chronic pain, which he attributed to aggravation by her employment. Although he noted that she had pain syndrome, chronic pain syndrome with depression and C6-7 cervical disc disease, these conditions have not been accepted by the Office.¹² In addition, Dr. Rush's disability notes and report are of diminished probative value because he has not provided any supporting rationale explaining how her condition was a result of her accepted employment injury. The Board has held opinions unsupported by rationale are entitled to little probative value.¹³ The physician also fails to describe how these conditions prevented appellant from working her light-duty position.¹⁴

The record also contains disability notes dated October 31 and December 1, 2008 disability note from Dr. Verma, requested appellant be excused from work for the period October 31, 2008 to January 5, 2009. These notes are of diminished probative medical value as Dr. Verma did not provide any opinion on the cause of the diagnosed conditions or explain how they were related to appellant's September 14, 2006 employment injury.¹⁵

Appellant also submitted reports from Dr. Bartholomew who diagnosed C3-4 disc bulge with impingement, C4-5 disc bulge, C6-7 disc herniation with stenosis and multilevel degenerative change and left paracentral bulge at C5-6 and C6-7 and concluded she was totally disabled. However, as noted above the Office has not accepted appellant's claim for C3-4 disc bulge with impingement, C4-5 disc bulge, C6-7 disc herniation with stenosis and multilevel degenerative change and left paracentral bulge at C5-6 and C6-7.¹⁶ Dr. Bartholomew's October 31, 2008 duty status report is insufficient to support appellant's claim of total disability as he provided no rationale explaining his conclusion. The Board has held opinions unsupported

¹¹ See *C.S.*, 60 ECAB ____ (Docket No. 08-2218, issued August 7, 2009); *Cecelia M. Corley*, 56 ECAB 662 (2005); *Theresa L. Andrews*, 55 ECAB 719 (2004).

¹² *Charles W. Downey*, 54 ECAB 421 (2003); *Alice J. Tysinger*, 51 ECAB 638 (2000) (for conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship).

¹³ *T.M.*, 60 ECAB ____ (Docket No. 08-975, issued February 6, 2009); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹⁴ See *Donald T. Pippin*, 54 ECAB 631 (2003).

¹⁵ See *A.F.*, 59 ECAB ____ (Docket No. 08-977, issued September 12, 2008); *Robert Broome*, 55 ECAB 339 (2004); *Michael E. Smith*, 50 ECAB 313 (1999) (medical opinion, which does not offer any opinion regarding the cause of an employee's condition, is of limited probative value).

¹⁶ *Supra* note 12.

by rationale are entitled to little probative value.¹⁷ Similarly, Dr. Bartholomew's December 1, 2008 attending physician form report is also insufficient to support her claim of disability. In this report, he noted that appellant became totally disabled on August 20, 2008 due to chronic cervical and lumbar pain. Dr. Bartholomew checked "yes" to the question of whether it was employment related. The Board has held that, without further explanation or rationale, a checked box is not sufficient to establish causation.¹⁸ Dr. Bartholomew's December 30, 2008 progress note is also insufficient to establish a causal relationship between her claimed recurrence of total disability and the accepted employment injuries of thoracic and lumbar back sprains. He noted appellant's low back and neck pain complaints and provided physical findings. However, there is no opinion on the cause of the diagnosed conditions or explanation as to how they were related to appellant's September 14, 2006 employment injury.¹⁹ Dr. Bartholomew also failed to describe how these conditions prevented appellant from working her light-duty position.²⁰

CONCLUSION

The Board finds that appellant did not establish that she sustained a recurrence of disability on and after August 20, 2008 causally related to her accepted September 14, 2006 employment injury.

¹⁷ *Supra* note 13.

¹⁸ *See Sedi L. Graham*, 57 ECAB 494 (2006); *Calvin E. King, Jr.*, 51 ECAB 394 (2000).

¹⁹ *Supra* note 15.

²⁰ *Supra* note 14.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 5, 2009 is affirmed.

Issued: August 12, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board